PUBLIC VERSION

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October 13, 2016

VIA ECFS AND FEDERAL EXPRESS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: ***AT&T Corp. v. Great Lakes Commc'n Corp.*****, Docket No. 16-170, File No. EB-16-MD-001**

Dear Ms. Dortch:

On behalf of Great Lakes Communication Corp. ("Great Lakes"), I have enclosed for filing the **Public Version** of its Opposition and Objections to AT&T Corp.'s Second Request for Interrogatories. As contemplated by the Commission's rules and the Protective Order entered in connection with the File noted above, all confidential information has been redacted from this **Public Version**.

Great Lakes is separately filing via overnight delivery hard copies of the **Confidential Version** of its objections. In addition, copies of both versions of the submission are being served electronically on AT&T's counsel, and courtesy copies are also being provided electronically to the Commission's Enforcement Bureau.

Please don't hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

Joseph P. Bowser
COUNSEL FOR GREAT LAKES COMMUNICATION CORP.

Enclosures

cc: James F. Bendernagel, Jr., Counsel for Complainant
Michael J. Hunseder, Counsel for Complainant
Brian A. McAleenan, Counsel for Complainant
Benjamin R. Brunner, Counsel for Complainant
Lisa Griffin, FCC
Anthony DeLaurentis, FCC
Sandra Gray-Fields, FCC
Christopher Killion, FCC

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090

Complainant,

v. **File No. EB-16-MD-001**

GREAT LAKES COMMUNICATION CORP.
1501 35th Avenue, W
Spencer, IA 51301
(712) 580-4700

Defendant.

GREAT LAKES COMMUNICATION CORP.'S OPPOSITION AND OBJECTIONS TO AT&T CORP.'S SECOND REQUEST FOR INTERROGATORIES

Pursuant to 47 C.F.R. § 1.729(c), Defendant Great Lakes Communication Corp. ("Great Lakes" or "GLCC") submits the following opposition and objections to AT&T's Second Request for Interrogatories.

GENERAL OBJECTIONS

In addition to the specific objections set forth below, Great Lakes objects generally as follows:

1. Great Lakes generally objects to any interrogatory to the extent it seeks information that is not relevant to the material facts in dispute and necessary to the resolution of the dispute, or is otherwise inconsistent with 47 C.F.R. § 1.729.

2. Great Lakes generally objects to any interrogatory that seeks information that is not in the possession, custody, or control of Great Lakes.

3. Great Lakes generally objects to any interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, or other judicially recognized privilege.

4. Great Lakes generally objects to any interrogatory that seeks proprietary and confidential information and/or trade secrets. Notwithstanding this objection, to the extent the Commission determines that discovery of such information or documents is necessary, Great Lakes is willing to provide the requested discovery pursuant to the terms of the parties' Protective Order in this proceeding.

5. Great Lakes generally objects to any interrogatory that requests additional discovery through production of documents. Great Lakes opposes AT&T's request for documents because AT&T has not provided a valid explanation of why the documents sought by AT&T are "necessary to the resolution of the dispute." 47 C.F.R. § 1.729(b). The documents provided with the Complaint and Answer are sufficient for the Commission to resolve this dispute, consistent with the agency's fact-pleading process for resolution of formal complaints. *See Implementation of the Telecommunications Act of 1996*, *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 F.C.C. Rcd. 22497, 22529 ¶¶ 70-71, 22534 ¶81 (1997). Great Lakes further objects to AT&T's document requests because documents are not necessary to provide responsive information to any of the interrogatories. AT&T's document requests are overly broad, and the burden production would impose on Great Lakes outweighs AT&T's need for discovery of the documents it requests.

6. Great Lakes generally objects to the interrogatories because AT&T has exceeded its limit of five written interrogatories. *See* 47 C.F.R. § 1.729(a). In particular, Interrogatories ATT-GLCC 11, 12, 14 and 15 have multiple sub-parts and/or present both an interrogatory and a request for production of documents. Thus, AT&T has exceeded the permissible limit under Section 1.729(a) of the Commission's rules. *See id.* ("Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit.").

OBJECTIONS TO DEFINITIONS

1. Great Lakes generally objects to the Definitions to the extent they purport to require Great Lakes to provide information or documents not currently within its possession, custody, or control.

2. Great Lakes objects to Definition No. 8 insofar as mischaracterizes any of Great Lakes' high-volume customers as "Free Calling Parties."

OBJECTIONS TO INSTRUCTIONS

1. Great Lakes generally objects to Instruction No. 1 to the extent it places an undue burden on Great Lakes and requires Great Lakes to supplement its responses beyond what is required by 47 C.F.R. § 1.720(g).

2. Great Lakes objects to Instruction No. 2; demanding Great Lakes to "[p]rovide all information, including all documents, related to answering the interrogatory" renders each interrogatory vague, unintelligible, without limit, unduly burdensome, and objectionable insofar as it purports to demand the production of information or communications protected by the attorney-client privilege and work-product doctrine.

3. Great Lakes generally objects to Instruction No. 12 to the extent it seeks information beyond what is required by 47 C.F.R. § 1.729.

OBJECTIONS TO SPECIFIC INTERROGATORIES

ATT-GLCC 11:

Identify and produce all documents reflecting Joshua D. Nelson's conversations with AT&T representatives regarding GLCC's provision of a direct connection service, including, but not limited to, the conversation discussed in paragraph 14 of Mr. Nelson's Declaration dated September 14, 2016.

OBJECTIONS: Great Lakes objects to this interrogatory because it relates to a claim with no legal merit, Count I of AT&T's Formal Complaint. In justifying this interrogatory, AT&T states that this information is necessary to resolve its claim that Great Lakes' refusal to provide a direct-trunked transport service to AT&T was unjust and unreasonable in violation of Section 201(b) of the Communications Act. As explained in greater detail in its initial Legal Analysis, Section I, Great Lakes has no legal duty to provide AT&T with a direct connect service generally, or at the rate in CenturyLink's access tariff specifically. To the contrary, Great Lakes' tariffed access service has at all times complied with the Commission's CLEC access charge benchmarking rules.[1] Moreover, AT&T knows that Count I of is Complaint is legally defective; its declarant in this proceeding, Mr. Habiak, has testified as follows:

> Establishing a connection between two networks is expensive, and it requires time and the cooperation of *both* parties. **LECMI [a CLEC] has no obligation to establish a "direct" connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a "direct" connection that results in much lower access revenues to itself** or cuts off its share of the Complainants' access revenues; to the contrary, **LECMI's natural self-interest creates an affirmative incentive *against* cooperation.**[2]

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1 *See* 47 C.F.R. § 61.26.

2 **Exhibit 1**, Rebuttal Testimony of John W. Habiak, on behalf of AT&T Corp, in Michigan Public Service Commission Case No. U-17619, at 4-5 (Sept. 11, 2014) (emphasis added in bold).

Even if Count I were not legally defective, this interrogatory seeks information and documents that are not relevant to the material facts in dispute in this proceeding or necessary to the resolution of the dispute. Any conversation Mr. Nelson has had with an AT&T representative has no bearing on whether Great Lakes has a legal duty under the Communications Act and the Commission's rules and implementing orders to establish a direct connection with AT&T.

Great Lakes further objects to this request to the extent it seeks materials protected by the attorney-client privilege or attorney work-product doctrine.

Subject to and without waiving its objections, Great Lakes states that there are no documents in its custody, possession, or control, that reflect Mr. Nelson's conversation with AT&T representatives regarding Great Lakes' provision of a "direct connection service" to AT&T.

AT&T-GLCC 12:

In paragraph 18 of his Declaration, Mr. Nelson asserts that he has "reached numerous mutually acceptable business arrangement [*sic*] with other carriers under which Great Lakes terminates long distance traffic pursuant to contract." Identify each such agreement and either produce it or describe the material "technical and financial terms of those [*sic*] commercial agreements [*sic*]."

OBJECTIONS: Great Lakes objects to this interrogatory because it seeks information and documents that are not relevant to the material facts in dispute in this proceeding or necessary to the resolution of the dispute. As the cited paragraph of Mr. Nelson's testimony reveals, Great Lakes reaches voluntary, commercial arrangements with carriers that do not engage in unlawful self-help, and which, also unlike AT&T, are "prepared to discuss the technical and financial terms of the commercial agreement." In Great Lakes' experience, as highlighted by AT&T's refusal to even allow Great Lakes to *unequivocally accept AT&T's "direct connect" offer*, AT&T is prepared only to withhold and litigate. Great Lakes has already produced one such voluntary commercial agreement with a third party to AT&T, and AT&T has not offered a single detail or fact from that contract that AT&T claims makes its (legally defective) claim more or less viable. Thus, the request is overly broad and unduly burdensome. Moreover, none of Great Lakes' commercial agreements involve the indirect "direct connection" service AT&T is proposing, viz., bypassing INS's transport service in favor of CenturyLink's. Accordingly, Great Lakes objects to providing the factually and legally irrelevant information and documents requested by this interrogatory.

ATT-GLCC 13:

In paragraph 20 of his Declaration, Mr. Nelson states that he is "confident that AT&T has numerous options to get its traffic to Great Lakes that do not require [*sic*] INS's CEA service." Identify and describe each such option (including but not limited to the material terms, such as price) and state the basis for Mr. Nelson's confidence that such options are available to AT&T.

OBJECTIONS: Great Lakes objects to this interrogatory for all of the reasons set forth in its objections to Interrogatories AT&T-GLCC 11 and 12. Great Lakes further objects because AT&T has not shown that any such arrangements would be relevant to a CLEC's obligation to provide direct-trunk transport service.

Great Lakes further objects to this interrogatory because the proffered rationale is without merit. AT&T claims that it needs this information to rebut Great Lakes' defense that it "need not have permitted AT&T to direct trunk to its end office because 'AT&T has not offered any competent evidence establishing that it was either willing or able to actually install 'direct trunking' to Great Lakes' end office switch." But that is not the point Mr. Nelson's quoted language was addressing. There, he was merely rebutting the false proposition that AT&T had repeated throughout its complaint that Great Lakes had somehow *forced* AT&T to use INS's FCC-approved CEA service. Because Great Lakes knows that it has numerous commercial agreements under which those carriers deliver IP traffic on a wholesale basis directly to Great Lakes (and therefore do not route their traffic via INS's TDM-based CEA service), it necessarily follows that Great Lakes has not forced AT&T to use INS's CEA service. Rather, AT&T's self-help, failure to reasonably negotiate with Great Lakes, and refusal to route its traffic through any of the available, existing IP-based routes is the cause of AT&T's alleged grievance over the

FCC's existing policy. None of those available, existing IP routes have anything to do with AT&T's hypothetical, TDM-based "direct connect" that it would, in theory, purchase from CenturyLink. Accordingly, Great Lakes objects to providing the information and documents requested by this interrogatory.

ATT-GLCC 14:

In paragraph 22 of his Declaration, Mr. Nelson states that in "our efforts [*sic*] to have each high-volume customer contribute their appropriate share to Great Lakes' cost of providing them service on our local network, including terminating them all of their interstate calls, when we price out the total monthly cost for each high-volume customer we look at those three variables and do our best to charge comparable prices for comparable quantities of service." Identify and produce all documents reflecting GLCC's efforts to "price out the [*sic*] monthly cost for each high volume [*sic*] customer" and explain how GLCC determines for each high-volume customer "their appropriate share [of] Great Lakes' cost of providing them service on [GLCC's] local network."

OBJECTIONS: Great Lakes objects to this request as futile, because regardless of the terms of Great Lakes' arrangements with its customers, AT&T invents ever more absurd and tortured constructions of them, such that it is futile to respond to this request, for even if Great Lakes recited that the parties were contracting for Great Lakes' provision of "telecommunications services," and the invoices recited that they were issued by Great Lakes "for telecommunications services rendered," and the customer paid them, AT&T would doubtless find some other meritless excuse to attack the plain terms of those records.

Great Lakes further objects because the "total monthly costs" are irrelevant to AT&T's allegation that the calls for which Great Lakes billed AT&T were not terminated to end users as that term is defined in the Tariff. As explained in Great Lakes' Legal Analysis supporting its Answer, the Commission has repeatedly disavowed any examination of a CLEC's costs of providing service. Rather, a customer is an "end user" under the Tariff and the Act when they are a "paying customer" of a LEC's telecommunications services; the costs of providing that

service are therefore irrelevant as a matter of law. Great Lakes further objects to this request as overly broad and unduly burdensome because the documents AT&T already has in its possession – Great Lakes' contracts with and invoices to its conferencing customers – provide the best evidence of Great Lakes' assessment of each customer's relative usage of Great Lakes' services.

ATT-GLCC 15:

With respect to the "three major variables" identified by Mr. Nelson in paragraph 22 of his Declaration [*sic*] state for 2015 the total costs that GLCC incurred in connection with the provision to its high-volume customers of [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

OBJECTIONS: Great Lakes objects to this interrogatory for all of the reasons set forth in its objections to Interrogatory AT&T-GLCC 14.

DATED: October 13, 2016

Respectfully submitted,

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COUNSEL FOR GREAT LAKES
COMMUNICATION CORP.

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2016, I caused a copy of the foregoing **Opposition and Objections to AT&T Corp.'s Second Request for Interrogatories** to be served as indicated in brackets below to the following:

Marlene H. Dortch
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

[Public Version via ECFS and Original via Federal Express; Confidential Version via Federal Express]

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Respectfully submitted,

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